IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 404 OF 2006
WITH
CIVIL APPLICATION NO. 534 OF 2006
IN
APPEAL FROM ORDER NO. 404 OF 2006

Nandkumar J. Khivansara ... Appellant
V/s.
Suresh B. Bhavsar & Ors. ... Respondent

Mr. Niranjan P. Shimpi for the appellant.

CORAM : A.M. KHANWILKAR, J.
DATED : 26th June, 2006

P.C.

. Heard counsel for the appellant. I see no reason to interfere with the interlocutory order passed by the Lower Court. The Lower Court has found that the plaintiff is neither the owner nor he is in possession of the suit flat for which reason, the plaintiff-appellant is not entitled for interim relief as prayed.

2. The counsel for the appellant invited my attention to the averments made in para 2 of the plaint. However, the documents referred to therein are not produced. The lower court has found that description of the suit property is different in the

advertisement. The defendants have been declared to be owner in respect of suit property in Special Civil Suit No. 75 of 1985 which decree has been confirmed by the appellate Court. The appellant has challenged that decree in the proceeding in which appellant is not party. All these questions will have to be considered at the trial.

3. For the present, it will have to be assumed that the appellant is not owner nor in possession of the disputed premises. If so, the question of granting interim relief does not arise.

4. It was next contended by the counsel for the appellant that the application for interim relief was filed in August, 2003, written argument was filed in April 2004 and judgment came to be passed in January, 2006. It was the submission of the appellant that after such distance of time, it was necessary for the Trial Court to re-hear the application before final order is passed. This grievance is made only across the Bar. There is no ground taken in the appeal memo that the order has been passed by the Trial Court without hearing the parties. Accordingly appeal should fail. The same is dismissed.

5. As the suit pending between the parties pertains to the year 1995, the Trial Court is directed to expedite hearing of the suit, to be finally disposed of preferably by end of March, 2007 in accordance with law uninfluenced by the observations made in the impugned order, or for that matter the present order.

6. Parties shall extend necessary co-operation to Trial Court for early disposal of the suit. All questions are left open.

7. Appeal and the Civil Application disposed of in the above terms.

[A.M. KHANWILKAR,J.]